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2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON  
4 AT TACOMA

5 SETH JAMES CURRAN,

6 Petitioner,

7 v.

8 JEFFREY A. UTTECHT,

9 Respondent.

CASE NO. C19-5381 BHS

ORDER DENYING PETITIONER'S  
MOTION FOR  
RECONSIDERATION OF WRIT  
OF HABEAS CORPUS AND  
LEAVE TO EXPAND THE  
RECORD

10 This matter comes before the Court on Petitioner Seth Curran's ("Petitioner")  
11 motion for reconsideration and leave to expand the record. Dkt. 29.

12 On April 22, 2019, Petitioner filed a proposed petition for writ of habeas corpus.  
13 Dkt. 1; *see also* Dkt. 7 (petition for writ of habeas corpus). On July 31, 2019, the  
14 Honorable David Christel, United States Magistrate Judge, issued a Report and  
15 Recommendation ("R&R") concluding the petition should be dismissed without  
16 prejudice based on Petitioner's failure to exhaust state court remedies. Dkt. 18.

17 On August 11 and 14, 2019, Petitioner filed objections to the R&R. Dkts. 19, 20.

18 On October 7, 2019, this Court issued an order denying Petitioner's objections,  
19 adopting the R&R, and dismissing the petition without prejudice for failure to exhaust.  
20 Dkt. 22. On October 8, 2019, the Clerk of Court entered judgment. Dkt. 26.

21 On October 14, 2019, Petitioner appealed the judgment to the Ninth Circuit Court  
22 of Appeals. Dkts. 27, 28.

1 On October 24, 2019, Petitioner filed the instant motion for reconsideration and  
2 leave to expand the record. Dkt. 29.

3 Motions for reconsideration are governed by Local Rule 7(h), which provides as  
4 follows:

5 Motions for reconsideration are disfavored. The court will ordinarily deny  
6 such motions in the absence of a showing of manifest error in the prior  
7 ruling or a showing of new facts or legal authority which could not have  
8 been brought to its attention earlier with reasonable diligence.

9 Local Rules W.D. Wash. LCR 7(h). “[A] motion for reconsideration should not be  
10 granted, absent highly unusual circumstances, unless the district court is presented with  
11 newly discovered evidence, committed clear error, or if there is an intervening change in  
12 the controlling law.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.  
13 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

14 In his motion for reconsideration, Petitioner argues that the Court should consider  
15 his claims as exhausted because only ineffective corrective processes were available to  
16 him in state court. Dkt. 29. In support of this argument, Petitioner submits a copy of his  
17 plea agreement where he agreed to waive his right to collaterally attack his conviction. *Id.*

18 First, Petitioner’s plea agreement is not “newly discovered” evidence. The plea  
19 agreement has been available to Petitioner since he signed it in his underlying criminal  
20 case, and at the very least, since he instituted his habeas action here. Thus, Petitioner fails  
21 to establish that newly discovered evidence merits reconsideration of his habeas petition.

22 Second, even if the Court does consider the plea agreement, Petitioner has failed  
to show that the Court erred by dismissing his petition for failure to exhaust. *Coleman v.*

1 *Thompson*, 501 U.S. 722, 731 (1991) (stating that a federal court must dismiss a federal  
2 habeas petition if its claims are unexhausted). 28 U.S.C. § 2254(c) provides that “[a]n  
3 applicant shall not be deemed to have exhausted the remedies available in the courts of  
4 the State, within the meaning of this section, if he has the right under the law of the State  
5 to raise, by any available procedure, the question presented.” In Washington, criminal  
6 defendants have a statutory right to direct appeal and collateral attack. *See* RCW Chapter  
7 10.73; *see also* Wash. R. App. P. §§ 2.2(a), 5.1, 6.1, 16.3, 16.4. Although Petitioner  
8 waived his right to collaterally attack his conviction in his plea agreement, presumably in  
9 exchange for the benefit of pleading guilty to lesser charges, he fails to explain how his  
10 waiver of the right demonstrates that he did not *have* the right under state law. Thus,  
11 Petitioner fails to establish clear error in the Court’s dismissal of his petition.

12 Third, Petitioner presents several authorities which purport to support his claim  
13 that the court should consider his claims exhausted despite his failure to present them to  
14 the state court first. Dkt. 29 at 4 (citing *Allen v. Alabama*, 728 F.2d 1384 (11th Cir. 1984),  
15 *re’g granted on other grounds by* 732 F.2d 858 (11th Cir. 1984); *Johnson v. New York*,  
16 974 F. Supp. 185 (E.D.N.Y. 1997); *Morris v. Kearney*, 390 F. Supp. 2d 422 (D. Del.  
17 2005)). “If a petitioner presents unexhausted habeas claims to a federal court, but further  
18 state court review is procedurally barred, the federal court will excuse the failure to  
19 exhaust and treat the claims as exhausted.” *Morris*, 390 F. Supp. 2d at 426 (citations  
20 omitted). However, “[a]lthough deemed exhausted, such claims are considered  
21 procedurally defaulted.” *Id.* (citing *Coleman*, 501 U.S. at 749).

1 Petitioner has not shown that his claims are procedurally barred. Washington  
2 places a one-year statute of limitations on collateral attack. RCW 10.73.090. The  
3 limitations period begins to run after the judgment becomes final. *Id.* Petitioner's  
4 judgment was entered in January 2019. Dkt. 14-1 at 11. It is now January 2020. Thus, it  
5 appears Petitioner may still be within the limitations period. Regardless, even if Petitioner  
6 could show that his claims are now procedurally defaulted, it would not alter this Court's  
7 conclusion that the instant petition was properly dismissed without prejudice, on the  
8 record before the Court when it issued its order, for failure to exhaust state remedies.  
9 *Coleman*, 501 U.S. at 731. Thus, Petitioner fails to establish that reconsideration is  
10 warranted and his motion, Dkt. 29, is **DENIED**.

11 If Petitioner wishes to initiate another writ of habeas corpus, he must file a new  
12 action.

13 **IT IS SO ORDERED.**

14 Dated this 17th day of January, 2020.

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17 BENJAMIN H. SETTLE  
18 United States District Judge  
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